GOH SENG PEOW & SONS REALTY SDN. BHD. v. THE COLLECTOR OF LAND REVENUE, WILAYAH PERSEKUTUAN

[O.C.J. (L.C. Vohrah J.) December 23, 1985]

[Kuala Lumpur – Originating Motion No. F.63 of 1984]

Land Law – Land acquisition – Application by originating motion to declare acquisition proceedings null and void – Whether procedure adopted was correct – Land Acquisition Act 1960, ss. 8 & 14.

Constitutional Law – Alleged breach of constitution and rules of natural justice – Federal Constitution, art. 13.

"Sometime in March 1977 the applicant company became the registered owner of 2 lots of land in Kuala Lumpur. While developing the said land the applicant company was informed that the lands had been compulsorily acquired. The applicant company wrote to the respondent asking for further information on the matter. The respondent forwarded copies of certain Forms issued pursuant to the Land Acquisition Act, 1960. All these forms did not name the applicant company as the registered owner of the lands. The applicant company only came to know of the acquisition proceedings after the compensation award was made by the respondent. The applicant company contended that the acquisition proceedings were illegal, null and void since "the registered proprietor had no notice whatsoever of the purported acquisition proceedings" and the necessary notices and documents had not been duly served upon the registered owner as required by law. The respondent by way of a preliminary objection contended that the procedure adopted by the applicant company was incorrect and that the applicant company could only ask for an order of certiorari to quash the proceedings as there was merely an error on the face of the record which made the proceedings only voidable and not void.

Held: (1) the acquisition proceedings had taken place contrary to the provisions of the Act and in breach of the fundamental rules of natural justice and the applicant-company had made out a case that its constitutional right might have been impinged, contrary to article 13 thus entitling the applicant company to seek a declaration;

(2) in the exercise of the court's discretion the applicant company should be allowed to proceed with its application for a declaratory remedy.

Cases referred to:

(1) *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour and Manpower & Anor.* [1983] 2 M.L.J. 54.
(2) *Gnanasundram* v. *Public Services Commission* [1966] 1 M.L.J. 157.
(3) *Sungai Wangi Estate* v. *UNI* [1975] 1 M.L.J. 136.
(4) *Pemungut Hasil Tanah, Kuantan* v. *Oriental Rubber & Palmoil Sdn. Bhd.* [1986] 1 M.L.J. 39.

ORIGINATING MOTION.

L. Kam (Miss) for the applicant.

P. M. Mahalingam (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Vohrah J.: This notice of originating motion was essentially an application for a declaration that the acquisition proceedings taken in respect of lands held under GM. No. 586 Lot 2177 and GM. No. 587 Lot 2176 in the Mukim of Kuala Lumpur were illegal and therefore null and void.

These lands were originally held under EMR 4162 and EMR 4163 respectively and registered in the names of Goh Seng Chong and Goh Seng Peow and were charged to Chung Khiaw Bank Ltd. on June 6, 1974. On March 3, 1977 the applicant-company became the registered owner of the lands whereupon it obtained a discharge of the lands and simultaneously entered a fresh charge. A second charge was then effected on March 5, 1982 and two new certificates of title were issued to the applicant-company on July 1, 1981. Some time in September 1984 whilst in the process of developing the lands into a housing estate the applicant-company was informed that the lands had been compulsorily acquired and its solicitors immediately wrote to the respondent for information regarding the compulsory acquisition (See 'PG-4'). The respondent subsequently forwarded to the solicitors copies of Forms E, F, G and H which had been issued pursuant to sections 10, 11, 14 and 16 respectively of the Land Acquisition Act 1960 (See Exhibits PG-5, PG-6, PG-7 and PG-8). All these forms named Goh Seng Chong and Goh Seng Peow as the registered proprietors instead of the applicant-company which had become the undisputed registered proprietor.

It is not in issue that the applicant-company only came to know of the acquisition proceedings after the compensation award of $74,375/- was made by the respondent under section 14 on December 15, 1982.

It is the contention of counsel for the applicant-company that the acquisition proceedings in respect of the lands starting with the declaration under section 8 and ending with the award under section 14 were illegal and therefore null and void since "the registered proprietor had no notice whatsoever of the purported acquisition proceedings" and the necessary notices and documents had not been duly served upon the registered owner as required by law.

Senior Federal Counsel by way of a preliminary objection contended that the procedure adopted by the applicant-company was incorrect because, he submitted, the only remedy applicant-company could have asked for on the authorities of *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour and Manpower & Anor.*,[1] *Gnanasundram* v. *Public Services Commission.*[2] *Sungai Wangi Estate* v. *UNI*[3] and the case of *Pemungut Hasil Tanah, Kuantan* v. *Oriental Rubber & Palmoil Sdn. Bhd.*[4] was an order of certiorari to quash the proceedings as there was merely an error on the face of the record which made the proceedings only voidable and not void. Counsel for the applicant-company, however, argued in reply that the lands had been acquired not only in contravention of Article 13 of the Federal Constitution in that the applicant-company had been deprived of property not in accordance with law but also in contravention of the rules of natural justice in that the applicant-company had not been made a party to the acquisition proceedings. She further contended that it had not been possible for the applicant to have applied for certiorari because it was time-barred by virtue of Order 53 rule 1A of the Rules of the High Court 1980, a factor which clearly prevailed upon Senior Federal Counsel when he raised his preliminary objection.

In the light of Senior Federal Counsel's admission of the relevant facts in the applicant's affidavits, I agreed with counsel for the applicant-company that the acquisition of the lands had taken place contrary to the provisions of the Act and in breach of the fundamental rules of natural justice and I was of the view that the applicant-company had made out a case that its constitutional right might have been impinged contrary to Article 13 thus entitling the applicant-company to seek a declaration. In any event, I did not think that I should refrain from exercising my discretion in allowing the applicant-company to proceed with its application for a declaratory remedy in order to prevent injustice in this particular case especially when the only procedure advocated by Counsel for the respondent was rendered unavailable to the applicant-company through effluxion of time by the default of the respondent. I did not think it was right that the applicant-company should be shut out in limine and I accordingly overruled the preliminary objection and directed that the proceedings continue.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.*

CHUA NEOH KOW v. MALAYAN BANKING BHD.

[A.C.J. (Shankar J.) September 14, 1985]

[Johore Bahru – Civil Appeal No. 5 of 1981]

Banking Law – Cheque – Letter to stop payment – Oral countermand – Bank honoured cheque despite – Breach of duty by banker – Damages – Evidence Act, 1950, ss. 65 & 66.

Banking Law – Cheque dishonoured – "Drawer's seal not according to specimen" – Wrongful dishonour – Damages.

In this appeal, the appellant ("Chua") appealed against the decision of the learned Magistrate dismissing his two claims against the respondent ("the Bank"). The first claim was in respect of a cheque for $500 which Chua drew on April 12, 1978. He claims that, contrary to his instructions written in Chinese to stop payment of this cheque, the Bank honoured this cheque. The second claim was in connection with a cheque for $250 which he drew on May 9, 1978 ("the May Cheque"). The Bank refused to honour the May cheque when presented for payment although he had adequate funds in the account to meet it on the ground that the "drawer's seal (was) not according to the specimen." Chua claimed damages for breach of duty on the part of the Bank. The learned Magistrate dismissed both claims. On appeal to the High Court.

Held, allowing the appeal with costs: (1) the learned Magistrate placed undue emphasis on the mistake in the identification of the name of the Malay gentleman to whom Chua said he handed the stop-payment letter. Chua also told a bank officer Ng to stop payment. In all the circumstances, the Bank was in breach of its duty to Chua. A countermand may be given orally, and Chua must have judgment on the first claim;

(2) had the learned Magistrate appreciated the full significance of Chua's letter dated March 27, 1978, he would not have found as he did. That letter constituted a specimen of Chua's new rubber stamp and his change of address. Judgment must be given for Chua on the second claim;

(3) on the first claim, judgment for Chua for $500 with interest thereon at 8% p.a. from April 14, 1978. On the second claim, judgment for $2,000 for Chua, with interest thereon from May 15, 1978 at 8% p.a.

Case referred to:

(1) *Westminster Bank* v. *Hilton* (1927) 136 L.T. 315.

CIVIL APPEAL.

Ho Thian Cheh for the appellant.

S. Balasekaran for the respondent.

Cur. Adv. Vult.

Shankar J.: This is an appeal from a decision of the learned Magistrate at Kluang whereby he